IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/10/2003

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THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.21353 of 2003

G. Aroselvan .. Petitioner

-Vs-

1. State of Tamilnadu rep.
by Secretary, Animal Husbandry
and Fisheries, Fort St.George
Chennai-9.

2. Director of Fisheries
Teynampet, Chennai-6.

3. Asst. Director of Fisheries
(Inland Fish Culture)
Theni. .. Respondents

writ of Mandamus as stated therein.

For Petitioner : Mr.K. Chandrasekaran

For Respondents : Mr.M.S. Palanisamy, AGP

:O R D E R

Heard both sides.

2. Admittedly, the contract with respect to the fishing right in the revenue tank called as Meersamudram Kanmoi Allinagaram, Theni Taluk, of an extent of 20.80 hectares, is governed by an agreement dated 5.10.2001 entered into between the petitioner and the third respondent for three years from 2001-2002 to 2003-2004.

3. Contending that due to drought during 2002-2003, the petitioner by his representation dated 3.3.2003, requested the second respondent to adjust the lease amount paid by him for the year 2002-2003, by waiving the lease amount for the year 2003-2004, as he could not harvest any fish during 2002-2003. However, the third respondent, without considering the representation of the petitioner dated 3.3.2003, by proceedings dated 8.7.2003, required the petitioner to pay the lease amount of Rs.11,05,000/-, or otherwise the lease would be cancelled. Hence, the petitioner sent another

representation dated 14.7.2003. As no order was passed on his representation, the petitioner seeks a writ of Mandamus directing the second respondent to consider and pass orders on his representation dated 3.3.2003.

4. The learned counsel for the petitioner relies upon on Clause 211 of the Board Standing Order, which deals with the procedure to be followed in the matter of granting lease of fishing rights in the revenue tanks and contends that as per Clause 211(6) of the Board Standing Order, the Government has got power to give remission to the fishery rentals and that the failure to exercise such power vested on the Government is illegal.

5. Mr.M.S. Palanisamy, learned Additional Government Pleader contends that since the fishing right of the petitioner is governed under the agreement dated 5.10.2001 entered into between the petitioner and the third respondent, the petitioner has to work out his right only before the competent civil Court, on the strength of the terms of the agreement dated 5.10.2001. In any event, it is contended that if the petitioner fails to pay the lease amount for the year 2003-2004 on the stipulated date, the respondents are entitled to bring the fishing right for the period 2003-2004 and 2004-2005 for public auction.

6. I have given careful consideration to the submissions of both sides.

7. It is not in dispute that the impugned fishing right is governed under the agreement between the petitioner and the third respondent. That apart, the contention of the petitioner that the impugned tank was badly affected by drought during the ye 002-2003 has to be established before the competent civil Court in appropriate civil proceedings, as it requires evidence to be adduced by the petitioner. In such case, it may not be proper for this Court to entertain the above writ petition and to grant the relief as prayed for.

8. However, it cannot be disputed that the Government has got power to entertain the representation in deserving cases, as provided under Clause 211(6) of the Board Standing Order. Failure to exercise such power, in my considered opinion, requires interference and therefore, suffice it to permit the petitioner to make representation to the first respondent within fifteen days from the date of receipt of a copy of this order. On such representation, the first respondent, in consultation with the third respondent, shall pass appropriate orders within eight weeks from the date of receipt of such representation. However, the time granted to the petitioner as well as the first respondent will not confer any right on the petitioner to delay the payment of lease amount to the third respondent for the year 2003-2004.

9. Even though the petitioner is expected to deposit the lease amount for the year 2003-2004 on or before 31.7.2003, since the matter is pending before this Court from 30.7.2003, the petitioner is permitted to pay the lease amount for the year 2003-2004 on or before 31.10.20 03 and thereafter, to work out his rights for waiving the lease amount for the year 2002-2003, referred

to above, if the fishing right had not been brought for public auction till date. If the petitioner fails to pay the lease amount for the year 2003-2004 on or before 31.10 .2003, it is clarified that the respondents are at liberty to notify the tank in question for public auction for the year 2003-2004 and to take further action in the matter. If the first respondent ultimately grants any remission of fishing rental for the year 2002-2003, the amount paid for the year 2002-2003 shall be adjusted for the next lease year 2004-2005, which is also governed under the agreement dated 5.10.2001.

The writ petition is ordered accordingly. No costs. WPMP No.26507 of 2003 is closed.

Index : Yes
Internet : Yes

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To

1. The Secretary, Animal Husbandry
and Fisheries, Fort St.George
Chennai-9.

2. Director of Fisheries
Teynampet, Chennai-6.

3. Asst. Director of Fisheries
(Inland Fish Culture)
Theni.

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